

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.731 of 2022

M/s Shriya Logistics

..... Petitioner

Mr. Prasanta Kumar Khuntia, Advocate

-versus-

***Aamogh Mining and Trading Private
Ltd. and another***

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.08.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 12th July, 2022 (Annexure-1) passed by learned Senior Civil Judge (Commercial Court), Cuttack CS (III) No.383 of 2017 directing the Petitioner to pay court fee on the relief claimed by the Plaintiff/Petitioner.
3. Mr. Khuntia, learned counsel for the Petitioner submits that Proprietor of the Plaintiff-firm is a lady. Hence, she is exempted from paying court fee as per notification dated 7th June, 1994 issued by the Department of Law, Government of Odisha. Accordingly, the Petitioner was exempted from payment of court fee at the time of filing of the suit. The Defendants/Opposite Parties on their appearance filed an application under Order VII Rule 11 CPC to reject the plaint on various grounds including non-payment of court fee. Considering the said application, learned Commercial Court while recalling its order exempting the Petitioner from payment of court fee directed the Plaintiff/Petitioner to pay ad valorem court fee on the valuation of the suit. Learned trial Court, while adjudicating the matter, relied upon the notification dated 30th

3.1 It is his submission that although commercial transaction has been excluded from the explanation of '*case or proceeding*' in the notification dated 5th February, 2013, but the word '*Woman*' has not been explained in the said notification. Thus, the notification is not applicable to the case at hand. In view of the above, learned trial Court has committed the error of law in directing the Petitioner to pay ad valorem court fee on the valuation of the suit.

4. To facilitate adjudication of the matter, relevant portion of the notification dated 30th January, 2013 issued by the Law Department is required to be considered, which reads as follows:-

“S.R.O. No.63/2013- In exercise of powers conferred by Section 35 of the Court Fees Act, 1870 (VII of 1870) and in supersession of the notification of the Government of Odisha in the Law Department No.8244-II-J-15/1993-L., dated the 7th June, 1994, published in extraordinary issue No.670, dated the 10th June 1994 of the Odisha Gazette. The State Government do hereby remit in the whole of the State of Odisha as fees mentioned in Schedules I and II to the Act payable for filing, instituting cases or(sic) proceedings other than proceedings for grant of succession certificate, letters of administration and probate of will annexed to it or without will annexed, in any Court by the following categories of persons, namely :-

- (i) *Member of Scheduled Castes*
- (ii) *Member of Scheduled Tribes*
- (iii) *Women*

xx xx xx

Explanation – For the purpose of this notification.

$$xx \qquad \qquad \qquad xx \qquad \qquad \qquad xx$$

- (iv) “Cases” or “Proceedings” means cases other than those which are based upon commercial transaction or activities or upon contracts agreements having nexus with business and profiteering motive.”

This notification has been issued in supersession of the earlier notification dated 7th June, 1994 issued in exercise of power conferred under Section 35 of the Court Fees Act, 1870 (for short, 'the Act'). Earlier, learned trial Court relying upon the notification of 1994 exempted the Plaintiff-Petitioner from payment of court fee. But, subsequently, notification of 2013 has been brought to his notice. In the said notification, '*case*' or '*proceeding*' has been clarified that cases other than those which are based upon commercial transaction or activities or upon contracts agreements having nexus with business and profiteering motive. The present suit squarely comes within the said explanation. Thus, the Plaintiff although a woman, is liable to pay court fee on the valuation of the suit. It appears that learned trial Court has made an elaborate discussion on the contentions raised by learned counsel for the parties and passed the impugned order relying upon the aforesaid notification of 2013. Thus, I find no infirmity in the impugned order. Learned counsel for the Petitioner, at this stage, prays for extension of time for payment of court fee.

5. Accordingly, the CMP stands disposed of with an observation that the Petitioner may seek for extension of time to pay the court fee by filing appropriate application before learned trial Court, if so advised.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge